Filed 6/13/07 In re Justin H. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JUSTIN H., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JUSTIN H., Defendant and Appellant.	G036753 (Super. Ct. No. DL007278) O P I N I O N

Appeal from an order of the Superior Court of Orange County, Ronald P. Kreber, Judge. Affirmed.

Shawn R. Perez, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and Scott C. Taylor, Deputy Attorney General, for Plaintiff and Respondent.

Justin H. appeals from a juvenile court detention order. The court found that Justin violated the terms and conditions of his probation during his residency in the juvenile "Breakthrough" program, ordered him continued as a ward of the court, and committed him to serve 90 days consecutive. Justin argues (1) the county failed to establish the existence of the specific probationary order he is alleged to have violated; and (2) the evidence was insufficient to support the conclusion he committed the particular offense which was the primary basis for the court's order. We find neither contention persuasive, and affirm the order.

* * *

On March 9, 2005, Justin filed a petition to transfer his probation from Los Angeles to Orange County. On March 23, 2005, while that petition was pending, he was arrested and charged with one count of carrying a concealed dirk or dagger in violation of Penal Code section 12020, subdivision (a)(4); and one count of possessing a switchblade in violation of Penal Code section 653(k). Justin subsequently admitted to the switchblade count, and the dirk or dagger count was dismissed. He was declared a ward of the Orange County Juvenile Court and ordered committed to an appropriate facility for 20 days, with credit for 15 days served. He was also ordered to serve a term of probation, and to obey all the rules and regulations of "parents/probation/program/institution."

Shortly thereafter, on April 25, 2005, the court heard Justin's petition to transfer his prior probation to Orange County, and that transfer was granted. Justin was again ordered to obey all rules and regulations of his "parent/probation/program."

On June 14, Justin was charged with various violations of his probation orders, including failure to report to his probation officer; failure to submit to drug testing; testing positive for methamphetamine; failing to complete community service; failure to enroll in anger management; changing residence without obtaining permission; and associating with persons not approved by probation. As a consequence of those

allegations, the court ordered that Justin be evaluated for the Breakthrough program and set the matter for a further hearing.

On July 18, 2005, Justin admitted to the alleged probation violations, and the court ordered him continued as a ward of the court, and committed him to serve 279 days (with credit for 39 days served) in an appropriate juvenile facility as part of either the Breakthrough program or the Assert program. The court ordered that Justin "obey rules and/or regulations of institution," and specified that "all prior orders to remain in full force and effect."

On December 30, 2005, Justin was again charged with violation of his probation. This time, the notice alleged that on July 18, 2005, Justin had been ordered to obey the usual terms and conditions of probation, and on August 18, 2005, he signed the Orange County Rules of Conduct for Juveniles. However, on August 24, 2005, Justin violated Rule 13 of the Rules of Conduct in that he exposed himself to a female minor. It further alleged that on November 18, and December 20, 2005, Justin also violated Rules 9 (disruptive behavior) and 10 (failure to follow directions) of those same Rules of Conduct. Justin denied the allegations and the court set a hearing on the matter.

At the conclusion of the hearing, the court found the alleged probation violations to be true, and ordered Justin continued as a ward of the court. He was committed for an additional 90 days, and ordered to "obey all rules and regulations of the court and juvenile hall and directions of the probation department."

I

Justin's first argument is that the prosecutor did not introduce the proper evidence in support of the allegations of the petition. He notes that although the petition alleges that on July 18, 2005, the court ordered him to obey the prior terms and conditions of his probation, the prosecutor did not offer *that* order into evidence. Instead, the prosecutor asked the court to take notice of a minute order dated April 25, 2005, and a

Tahl form dated April 6, 2005 – both of which recite the specific terms and conditions which had actually been imposed.

If we characterize Justin's argument as complaining about a variance between the allegations of the petition (violation of an order dated July 18, 2005) and the proof (two orders dated in April of 2005), it fails for two reasons. First, as explained in *In re Michael D.* (2002) 100 Cal.App.4th 115, 127, "we do not measure the sufficiency of the evidence against the allegations of the petition. We measure the sufficiency of the evidence against the penal statute." Thus, as long as the evidence was sufficient to establish that Justin had violated the terms of his probation, it is immaterial whether those terms were imposed in April or July of 2005.

Moreover, by Justin's own admission, the distinction was not material. Even he describes the matter as a "technicality" and acknowledges he actually "had notice of the charges." That alone would be a sufficient basis to disregard the variance. "[t]he charging document provides notice to the accused. As long as it serves that purpose, it is adequate. The same is true with a petition in a delinquency proceeding." (*In re Michael D., supra*, 100 Cal.App.4th at p. 127.)

And if we analyze Justin's argument as a more straightforward sufficiency of the evidence claim, it fares no better. Stated simply, there was no magic in the "July 18, 2005" order date alleged in the petition. Indeed, it was technically surplusage, and there was no need for it to be proved.

The "Notice of Hearing on Juvenile Probation Violation" is a form document. It includes boiler-plate allegations which recite that the "minor was declared a ward of the Juvenile Court, under Section 602 WIC of the State of California," and that "[t]he minor was ordered to comply with specific Court orders, including the minor obey the rules and regulations of probation." The form continues with boiler-plate language stating: "However, since being on probation, the minor violated said terms of probation by:" Following that phrase, the specifics of the alleged transgressions are added in.

The specifics of Justin's misconduct begin with the statement "On July 18, 2005, the Juvenile Court ordered the ward to obey the usual terms and conditions of probation." That statement, however is essentially duplicative of the prior boiler-plate wording stating that the "minor was ordered to . . . obey the rules and regulations of probation." The specific date upon which he had been ordered to do so is of no actual significance – hence the lack of any date in the boiler-plate version.

What was important was to establish the actual terms and conditions of Justin's probation at the time of his alleged misconduct, so as to demonstrate that the misconduct qualified as a violation of those terms.[1] That proof was provided by the two orders, dated April 6, and April 25, 2005, which the prosecutor did offer into evidence. In the absence of some evidence that those terms and conditions had expired, or were superseded, or that Justin was somehow disadvantaged by their consideration, the court was entitled to rely upon them.

Justin argues, however, that because the prosecutor offered no evidence regarding the specific content *of the alleged July 18, 2005 order*, "it is possible for this court to infer that the probation conditions were not ordered, *or that the prior order had been modified to delete the relevant conditions.* After all, if they existed and were in full force and effect, they would have been offered into evidence." (Italics added.) We disagree.

It is not possible for this court to "infer" any facts inconsistent with the trial court's decision. As explained in *Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 630-631, "It is not our task to weigh conflicts and disputes in the evidence; that is the province of the trier of fact. Our authority begins and ends with a determination as to whether, on the entire record, there is *any* substantial evidence, contradicted or

---

[1] The specific allegations of Justin's probation violation continue, with the statement that "on August 18, 2005, [Justin] signed the Orange County Institutional Rules of Conduct for Juveniles. [He] failed to abide by these rules of conduct in that on or about August 24, 2005, [Justin] violated Institutional Rules of Conduct #13 (Sexual Misconduct) by exposing himself to a female minor."

uncontradicted, in support of the judgment. Even in cases where the evidence is undisputed or uncontradicted, if two or more different inferences can reasonably be drawn from the evidence this court is without power to substitute its own inferences or deductions for those of the trier of fact, which must resolve such conflicting inferences in the absence of a rule of law specifying the inference to be drawn. We must accept as true all evidence and all reasonable inferences from the evidence tending to establish the correctness of the trial court's findings and decision, resolving every conflict in favor of the judgment." (See also *People v. Wader* (1993) 5 Cal.4th 610, 640 ["We draw all reasonable inferences in support of the judgment."].)

Although Justin's "inference" argument is one that might properly have been made to the trial court, it was unlikely to have gotten him very far even there. Because the prosecutor offered into evidence the April 2005, orders reflecting the terms and conditions of Justin's probation, the court was entitled to presume those terms and conditions remained in effect in August of 2005 – when Justin committed his alleged violation. Consequently, in the absence of some affirmative evidence suggesting they had expired or been superseded, it is unlikely the trial court would have been willing to simply infer that they had.

If Justin had some basis to assert that the terms and conditions of the April 2005 orders were no longer applicable at the time of his alleged violation (either by virtue of the court's July 18, 2005 order or otherwise), it would have been a simple thing *for him* to have offered that evidence to the court. Absent any such effort, the court would likely have summarily dismissed any suggestion that it should simply "infer" that such evidence existed.

Consequently, the existence of the alleged July 18, 2005 order was immaterial to the sufficiency of the prosecutor's evidence in this case. The other evidence offered by the prosecutor, and admitted by the court, was sufficient to demonstrate both that Justin was on probation at the time of his alleged misconduct, and

the terms and conditions applicable to that probation. Nothing more was required with respect to that aspect of the prosecutor's case.

II

Justin's second argument is that the evidence is also insufficient to support the conclusion he actually committed one of the incidents of misconduct alleged against him.

Specifically, Justin points out that Sarah C., the "female minor" to whom he is alleged to have exposed himself, testified that the incident took place during a class both were attending in connection with their respective juvenile detentions. However, she had also stated the incident occurred in *April of 2005*, which was several months before Justin entered the Breakthrough program in August of 2005, and began attending that particular class. As a consequence, Justin asserts that her testimony was insufficient on its face to support the allegation against him.

Again, we disagree. Indeed, this argument suffers from a variation of the same flaw that undermined Justin's prior argument – undue focus on a specific, and ultimately unnecessary, date.

While it is true that Sarah described the incident in which Justin exposed himself to her as having occurred in April of 2005 (she was unsure of the exact date), she also described the incident in some detail and unequivocally identified Justin as the perpetrator. Moreover, Sarah also testified that her own commitment in the juvenile facility had extended until September 17th of 2005, – one month beyond the date Justin's commitment began. Thus, Justin and Sarah were in the program at the same time. And finally, in another part of her testimony, Sarah described the incident in which Justin exposed himself to her as having occurred less than a month after he joined the program.

As with any case in which the appellant challenges the sufficiency of the evidence, we are obligated to indulge all inferences in support of the trial court's decision. "In determining whether a judgment is supported by substantial evidence, we

may not confine our consideration to isolated bits of evidence, but must view the whole record in a light most favorable to the judgment, resolving all evidentiary conflicts and drawing all reasonable inferences in favor of the decision of the trial court. (*People v. Johnson* (1980) 26 Cal.3d 557, 576-578.) We may not substitute our view of the correct findings for those of the trial court; rather, we must accept any reasonable interpretation of the evidence which supports the trial court's decision." (*Beck Development Co. v. Southern Pacific Transportation Co.* (1996) 44 Cal.App.4th 1160, 1203.)

Applying that standard, we have no problem concluding that, taken as a whole, Sarah's testimony was sufficient to establish Justin was guilty of the charged violation. Although we might agree Sarah's recitation of an April date for the incident would have given the court some basis to conclude Justin could not have been the perpetrator, we certainly would not agree it obligated the court to reach that conclusion. Instead, the court could just as easily have been persuaded by Sarah's unequivocal identification of Justin as the perpetrator, as well as by her description of the incident, while concluding she had simply misrecollected (or misstated) the date it had occurred. Indeed, the inference that Sarah was mistaken about the date is bolstered by her testimony that the incident had occurred fairly soon after Justin began attending her class – an assertion which comports with the prosecutor's allegation that the incident actually did occur in August of 2005, just shortly after Justin joined the Breakthrough program.

The trial court could easily have concluded she said "April" when she meant "August." This, standing alone, is way too slender a reed to support an assignment of error. Consequently, we find no error in the court's conclusion.

The order is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.